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ASSIGNMENT OF ERROR.

An assignment of error which indicates the subject-matter in the charge to which the exceptions relate with sufficient clearness to enable the court, from a mere inspection of the charge, to ascertain the particular matter referred to, is sufficient. *Hickory* v. *United States*, 408.

BOUNDARY LINE.

At the request of the parties, this court, after deciding where is the true and proper southern boundary line of the State of Iowa, appoints a commission to find and remark the same with proper and durable monuments. *Missouri* v. *Iowa*, 688.

CASES AFFIRMED.

1. *Moore* v. *United States*, 150 U. S. 57, 61, affirmed and applied to a question raised in this case. *Goldsby* v. *United States*, 70.
2. Affirmed upon the authority of *Washington & Idaho Railroad Company*

v. *Cœur d'Alene Railway & Navigation Company*, 160 U. S. 77. *Washington & Idaho Railroad Co.* v. *Cœur d'Alene Railway & Navigation Co.*, 101.

3. *Mills* v. *Green*, 159 U. S. 651, affirmed to the point that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for the appellate court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief, the court will not proceed to a formal judgment, but will dismiss the appeal. *New Orleans Flour Inspectors* v. *Glover*, 170.
4. *Wood* v. *Brady*, 150 U. S. 18, affirmed and applied to this case. *Dougherty* v. *Nevada Bank*, 171.

See CORPORATION, 4; CRIMINAL LAW, 6; ESTOPPEL, 4; INDICTMENT, 4; JURISDICTION, E, 1; PRACTICE, 1.

CASES DISTINGUISHED.

See JURISDICTION, A, 6.

CLAIMS AGAINST THE UNITED STATES.

The claimant originally enlisted at Washington in August, 1878, and was discharged at Mare Island, California, November 6, 1886, receiving, (under the provisions of Rev. Stat. § 1290, as amended by the act of February 27, 1877,) travel pay and commutation of subsistence from Mare Island to Washington. He did not return to Washington, but, November 10, 1886, reënlisted at Mare Island as a private, and in the course of his service was returned to Washington, where, at the expiration of two years and four months, he was discharged at his own request. *Held*, that, as the service was practically a continuous one, and his second discharge occurred at the place of his original enlistment, he was not entitled to his commutation for travel and subsistence to the place of his second enlistment. *United States* v. *Thornton*, 654.

COINAGE.

See JURISDICTION, A, 3.

CONFESSION.

See EVIDENCE, 8.

CONSTITUTIONAL LAW.

1. The Fourteenth Amendment to the Constitution in no way undertakes to control the power of a State to determine by what process legal rights may be asserted, or legal obligations be enforced, pro-

vided the method of procedure adopted for these purposes gives reasonable notice, and affords fair opportunity to be heard, before the issues are decided. *Iowa Central Railway Co.* v. *Iowa*, 389.

2. Whether the court of last resort of a State has properly construed its own constitution and laws in determining that a summary process under those laws was applicable to the matter which it adjudged, is purely the decision of a question of state law, binding upon this court. *Ib.*
3. It is no denial of a right protected by the Constitution of the United States to refuse a jury trial in a civil cause pending in a state court, even though it be clearly erroneous to construe the laws of the State as justifying the refusal. *Ib.*
4. In Louisiana the constitution and laws of the State, as interpreted by its highest court, permit the taking, without compensation, of land for the construction of a public levee on the Mississippi River, on the ground that the State has, under French laws existing before its transfer to the United States, a servitude on such lands for such a purpose; and they subject a citizen of another State owning such land therein, the title to which was derived from the United States, to the operation of the state law as so interpreted. *Held*, that there was no error in this so long as the citizen of another State receives the same measure of right as that awarded to citizens of Louisiana in regard to their property similarly situated. *Eldridge* v. *Trezevant*, 452.
5. The provisions of the Fourteenth Amendment to the Constitution do not override public rights, existing in the form of servitudes or easements, which are held by the courts of a State to be valid under its constitution and laws. *Ib.*
6. The act of August 1, 1888, c. 728, authorizing the Secretary of the Treasury, whenever in his opinion it will be necessary or advantageous to the United States, to acquire lands for a light-house by condemnation under judicial proceedings in a court of the United States for the district in which the land is situated, is constitutional. *Chappell* v. *United States*, 499.
7. In 1883 R. had his legal residence in New Jersey, but actually lived in New York. His wife resided in New Jersey, and filed a bill in the Court of Chancery of that State against him for divorce on the ground of adultery. The defendant appeared and answered, denying the allegations in the bill. In 1886 the plaintiff filed a supplemental bill charging other acts of adultery subsequent to the filing of the bill. The court made an order, reciting the appearance and answer of the defendant to the original bill, directing him to appear on a day named and plead to the supplemental bill, and ordering a copy of this order, with a certified copy of the supplemental bill, to be served on him personally, which was done in the city of New York. The defendant did not so appear and answer, and the further proceedings in the case

resulted in a decree finding the defendant guilty of the acts of adultery charged "in the said bill of complaint and the supplemental bill thereto," granting the divorce prayed for, and awarding the plaintiff alimony. The plaintiff commenced an action in a court of the State of New York to recover alimony on this decree, whereupon the defendant, by the solicitor who had appeared for him and filed his answer to the original bill, applied for and obtained from the chancellor in New Jersey an amendment to the decree so as to make it read that the defendant had been guilty of the crime of adultery charged against him in said supplemental bill. The complaint in the New York case set forth the proceedings and decree in the New Jersey case, and alleged that the defendant had accepted the proceedings as valid, and had, after the decree of divorce, married another wife. The defendant answered, denying that the Court of Chancery in New Jersey had any jurisdiction to enter the decree on the supplemental bill, and admitting his second marriage. On the trial of the New York case, the evidence of an attorney and counsellor of the Supreme Court of New Jersey, as an expert, was offered and received to the effect that in his opinion the chancellor erred in taking jurisdiction and proceeding to judgment on the supplemental bill, without service of a new subpœna in the State, or the voluntary appearance of defendant after the filing of the supplemental bill, and that the law of New Jersey did not warrant him in so doing. The trial resulted in a judgment for defendant, which was sustained by the Court of Appeals upon the ground that the law of New Jersey and the practice of its Court of Chancery had been shown by undisputed evidence to be as stated by the expert. *Held*, (1) That, in the absence of statutory direction or reported decision to the contrary, this court must find the law of New Jersey applicable to this case in the decree of the chancellor, and that the remedy of the defendant, if he felt himself aggrieved, was by appeal; (2) That the *opinion* of the expert could not control the *judgment* of the court in this respect; (3) That the New York courts, in dismissing the plaintiff's complaint, did not give due effect to the provisions of Article IV of the Constitution of the United States, which require that full faith and credit shall be given in each State to the judicial proceedings of every other State. *Laing* v. *Rigney*, 531.

See JURISDICTION, A, 12.

CONTRACT.

1. Impossibility of performing a contract, arising after the making of it, although without any fault on the part of the covenantor, does not discharge him from his liability under it. *Jacksonville, Mayport &c. Railway* v. *Hooper*, 514.
2. A lessee of a building who contracts in his lease to keep the leased building insured for the benefit of the lessor during the term at an agreed

sum, and fails to do so, is liable to the lessor for that amount, if the building is destroyed by fire during the term. *Ib.*

See CORPORATION, 3, 4;
EQUITY, 1, 2, 5;
SEAL.

CORPORATION.

1. By virtue of the act of March 3, 1887, c. 373, as corrected by the act of August 13, 1888, c. 866, a corporation incorporated by a State of the Union cannot be compelled to answer to a suit for infringement of a trade-mark under the act of March 3, 1881, c. 138, in a district in which it is not incorporated and of which the plaintiff is not an inhabitant, although it does business and has a general agent in that district. *In re Keasbey & Mattison Co.*, 221.
2. When no legislative prohibition is shown, it is within the chartered powers of a railroad company to lease and maintain a summer hotel at its seaside terminus, and such power is conferred on railroads in Florida. *Jacksonville, Mayport &c. Railway* v. *Hooper*, 514.
3. The authority of the president of such company to execute in the name of the company a lease to acquire such hotel may be inferred from the facts of his signing, sealing, and delivering the instrument, and of the company's entering into possession under the lease and exercising acts of ownership and control over the demised premises, even if the minutes of the company fail to disclose such authority expressly given. *Ib.*
4. The court adheres to the rule laid down in *Central Transportation Co.* v. *Pullman's Car Co.*, 139 U. S. 24, that a contract of a corporation which is *ultra vires* in the proper sense is not voidable only, but wholly void and of no legal effect; but it further holds that a corporation may also enter into and engage in transactions which are incidental or auxiliary to its main business, which may become necessary, expedient, or profitable in the care and management of the property which it is authorized to hold, under the act by which it is created. *Ib.*

COURT AND JURY.

1. It was not the province of the court to instruct the jury in this case to render a verdict in the plaintiffs' favor, and had it done so it would have usurped the province of the jury, by determining the proper inference to be drawn from the evidence, and by deciding on which side lay the preponderance of proof. *Bamberger* v. *Schoolfield*, 149.
2. When the charge of the trial judge takes the form of animated argument, the liability is great that the propositions of law may become interrupted by digression, and be so intermingled with inferences springing from forensic ardor, that the jury will be left without proper instructions, their province of dealing with the facts invaded, and errors intervene. *Allison* v. *United States*, 203.

3. There is no error in an instruction to the jury, where the evidence is conflicting, that in coming to a conclusion they should consider the testimony in the light of their own experience and knowledge. *Jacksonville, Mayport &c. Railway* v. *Hooper*, 514.

See CRIMINAL LAW, 9, 15, 16, 17, 18;
RAILROAD, 2.

COURT OF CLAIMS.

See JURISDICTION, E.

CRIMINAL LAW.

1. To support an indictment on section 5480 of the Revised Statutes, as amended by the act of March 2, 1880, c. 393, for devising a scheme to sell counterfeit obligations of the United States, by means of communication through the post office, it is unnecessary to prove a scheme to defraud. *Streep* v. *United States*, 128.
2. In order to come within the exception of "fleeing from justice," in section 1045 of the Revised Statutes, concerning the time after the commission of an offence within which an indictment must be found, it is sufficient that there is a flight with the intention of avoiding being prosecuted, whether a prosecution has or has not been begun. *Ib.*
3. In order to constitute "fleeing from justice," within the meaning of section 1045 of the Revised Statutes, it is not necessary that there should be an intent to avoid the justice of the United States; but it is sufficient that there is an intent to avoid the justice of the State having jurisdiction over the same territory and the same act. *Ib.*
4. For the committing of the offence under Rev. Stat. § 4786, (as amended by the act of July 4, 1884, c. 181, § 4, 23 Stat. 98, 101,) of wrongfully withholding from a pensioner the whole, or any part of the pension due him, an actual withholding of the money before it reaches the hands of the pensioner is essential; and it is not enough that it is fraudulently obtained from him, after it had reached his hands; and that act does not forbid or punish the act of obtaining the money from the pensioner by a false or fraudulent pretence. *Ballew* v. *United States*, 187.
5. A general verdict of guilty, where the indictment charges the commission of two crimes, imports of necessity a conviction as to each; and if it appears that there was error as to one and no error as to the other, the judgment below may be reversed here as to the first, and the cause remanded to that court with instructions to enter judgment upon the second count. *Ib.*
6. When a person indicted for the commission of murder, offers himself at the trial as a witness on his own behalf under the provisions of the act of March 16, 1878, c. 37, 20 Stat. 30, the policy of that enactment should not be defeated by hostile intimations of the trial judge.

Hicks v. *United States*, 150 U. S. 442, affirmed. *Allison* v. *United States*, 203.

7. The defendant in this case having offered himself as a witness in his own behalf, and having testified to circumstances which tended to show that the killing was done in self-defence, the court charged the jury: "You must have something more tangible, more real, more certain, than that which is a simple declaration of the party who slays, made in your presence by him as a witness, when he is confronted with a charge of murder. All men would say that." *Held*, that this was reversible error. *Ib.*
8. Other statements made by the court to the jury are held to seriously trench on that untrammelled determination of the facts by a jury to which parties accused of the commission of crime are entitled. *Ib.*
9. What is or what is not an overt demonstration of violence sufficient to justify a resistance which ends in the death of the party making the demonstration varies with the circumstances; and it is for the jury, and not for the judge, passing upon the weight and effect of the evidence, to determine whether the circumstances justified instant action, because of reasonable apprehension of danger. *Ib.*
10. A count in an indictment which charges that the accused, "being then and there an assistant, clerk, or employé in or connected with the business or operations of the United States post office in the city of Mobile, in the State of Alabama, did embezzle the sum of sixteen hundred and fifty-two and $\frac{53}{100}$ dollars, money of the United States, of the value of sixteen hundred and fifty-two and $\frac{53}{100}$ dollars, the said money being the personal property of the United States," is defective in that it does not further allege that such sum came into his possession in that capacity. *Moore* v. *United States*, 268.
11. The count having been demurred to, and the demurrer having been overruled, the objection to it is not covered by Rev. Stat. § 1025, and is not cured by verdict. *Ib.*
12. Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted, or into whose hands it has lawfully come; and it differs from larceny in the fact that the original taking of the property was lawful, or with the consent of the owner, while, in larceny, the felonious intent must have existed at the time of the taking. *Ib.*
13. Acts of concealment by an accused are competent to go to the jury as tending to establish guilt, but they are not to be considered as alone conclusive, or as creating a legal presumption of guilt, but only as circumstances to be considered and weighed in connection with other proof with the same caution and circumspection which their inconclusiveness, when standing alone, requires. *Hickory* v. *United States*, 408.
14. The presumption of guilt arising from the flight of the accused is a presumption of fact — not of law — and is merely a circumstance tend-

ing to increase the probability of the defendant's being the guilty person, which is to be weighed by the jury like any other evidentiary circumstance. *Ib.*

15. A statement in a charge to the jury that no one who was conscious of innocence would resort to concealment is substantially an instruction that all men who do so are necessarily guilty, and magnifies and distorts the power of the facts on the subject of the concealment. *Ib.*
16. The court below charged the jury as to the probative weight which should be attached to the flight of the accused, as follows: "And not only this, but the law recognizes another proposition as true, and it is that 'the wicked flee when no man pursueth, but the innocent are as bold as a lion.' That is a self-evident proposition that has been recognized so often by mankind that we can take it as an axiom and apply it to this case." *Held*, that this was tantamount to saying to the jury that flight created a legal presumption of guilt, so strong and so conclusive, that it was the duty of the jury to act on it as axiomatic truth, and as such that it was error. *Ib.*
17. On these points the charge of the court was neither calm nor impartial, but put every deduction which could be drawn against the accused from the proof of concealment and flight, and omitted or obscured the converse aspect; and in so doing it deprived the jury of the light requisite to the safe use of these facts for the ascertainment of truth. *Ib.*
18. The plaintiff in error being indicted for the murder of one Wilson, became a witness on his own behalf on his trial. The court charged the jury: "Bearing in mind that he stands before you as an interested witness, while these circumstances are of a character that they cannot be bribed, that cannot be dragged into perjury, they cannot be seduced by bribery into perjury, but they stand as bloody naked facts before you, speaking for Joseph Wilson and justice, in opposition to and confronting this defendant, who stands before you as an interested party; the party who has in this case the largest interest a man can have in any case upon earth." *Held*, that such a charge crosses the line which separates the impartial exercise of the judicial function from the region of partisanship where reason is disturbed, passions excited, and prejudices are necessarily called into play. *Ib.*
19. If it appears, on the trial of a person accused of committing the crime of murder, that the deceased was killed by the accused under circumstances which — nothing else appearing — made a case of murder, the jury cannot properly return a verdict of guilty of the offence charged if, upon the whole evidence, from whichever side it comes, they have a reasonable doubt whether at the time of killing the accused was mentally competent to distinguish between right and wrong or to understand the nature of the act he was committing. *Davis* v. *United States*, 469.
20. No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that

the evidence before them, by whomsoever adduced, is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged. *Ib.*

21. The plaintiff in error was indicted, tried, and convicted of murder by shooting. Among the evidence for the prosecution, admitted under objections and excepted to, were: (1) A declaration in writing by the murdered person, made after the shooting, and, as claimed, under a sense of impending death. This was offered in chief. (2) The statement of a witness, offered in rebuttal, that, on a later day and before her death the murdered person said that her former statement was true. *Held*, (1) That it was satisfactorily established that the written statement of the victim was made under the impression of almost immediate dissolution, and that it was therefore properly admitted; (2) That, as it did not appear whether at the time when the later statement was made she spoke under the admonition of her approaching end, or anticipated recovery, it was improperly admitted; (3) That the evidence so offered in rebuttal was not legitimate rebutting testimony. *Carver* v. *United States*, 553.

See COURT AND JURY, 2;
EVIDENCE, 7, 8;
INDICTMENT.

DEMURRER.

See CRIMINAL LAW, 11.

DIVORCE.

See CONSTITUTIONAL LAW, 7.

EMBEZZLEMENT.

See CRIMINAL LAW, 12.

EMINENT DOMAIN.

1. An appropriation by Congress for continuing the work of surveying, locating, and preserving the lines of battle at Gettysburg, Pennsylvania, and for purchasing, opening, constructing, and improving avenues along the portions occupied by the various commands of the armies of the Potomac and Northern Virginia on that field, and for fencing the same; and for the purchase, at private sale or by condemnation, of such parcels of land as the Secretary of War may deem necessary for the sites of tablets, and for the construction of the said avenues; for determining the leading tactical positions and properly marking the same with tablets of batteries, regiments, brigades, divisions, corps, and other organizations, with reference to the study and correct understanding of the battle, each tablet bearing

a brief historical legend, compiled without praise and without censure, is an appropriation for a public use, for which the United States may, in the exercise of its right of eminent domain, condemn and take the necessary lands of individuals and corporations, situated within that State, including lands occupied by a railroad company. *United States* v. *Gettysburg Electric Railway Company*, 668.

2. Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by Congress, must be valid, and the proposed use in this case comes within such description. *Ib.*
3. The mere fact that Congress limits the amount to be appropriated for such purpose does not render invalid the law providing for the taking of the land. *Ib.*
4. The quantity of land which should be taken for such a purpose is a legislative, and not a judicial, question. *Ib.*
5. When land of a railroad company is taken for such purpose, if the part taken by the government is essential to enable the railroad corporation to perform its functions, or if the value of the remaining property is impaired, such facts may enter into the question of the amount of the compensation to be awarded. *Ib.*

EQUITY.

1. A court of equity in the District of Columbia may take jurisdiction of a bill brought against the administrator and heirs of an intestate, alleging a verbal agreement between the intestate and the plaintiff by which the plaintiff was to contribute one half of the cost of a tract of land and of a dwelling-house to be erected thereon, and the intestate, after entering on the property, was to convey to him a half interest therein, and setting forth his performance of his part of the agreement, and her repeated recognition of her obligation to perform her part thereof, and her death without having done so after having mortgaged the property for a debt of her own, and praying for an accounting, and a decree directing payment to the plaintiff of one half of the value of the real estate and improvements, and a sale of the same; and the court may decree specific performance of so much of the contract proved as can be enforced, and compensation to the plaintiff in damages for the deficiency. *Townsend* v. *Vanderwerker*, 171.
2. While the mere payment of the consideration in money in such case is insufficient to remove the bar of the statute of frauds, such payment, accompanied by an entry of the other party into possession under the contract, is such a part performance as will support a bill like the present one. *Ib.*

3. The question of laches does not depend upon the fact that a certain definite time has elapsed since the cause of action accrued, but upon whether, under all the circumstances of the particular case, the plaintiff is chargeable with a want of due diligence in failing to institute proceedings earlier; and, under the peculiar circumstances of this case, the bill is not open to the defence of laches. *Ib.*
4. The bill in this case is not open to the charge of multifariousness. *Ib.*
5. In May, 1885, P., having an opportunity to purchase ten acres of land near Omaha, at a cost of $3600, payable $1250 in cash, the rest on credit, wrote to D. that he could buy the tract for $4800, payable $2500 in cash, the rest on credit, and asked him to join in the purchase. D. assented, sent his $1250 to P., and joined in a mortgage for the balance of the purchase money. In October, 1885, P. wrote to D. that he had sold the ten acres to B. for $6000, $3000 of which were in cash, and enclosed a cheque for $1500, and a deed to B. to be executed by D. in which the consideration was expressed at $6000. This amount was subsequently changed to $10,000 without D.'s knowledge. On the day after receiving the deed, B. reconveyed the property to P. The land was laid out into lots and streets under direction of P., and some of the lots were sold to *bona fide* purchasers. After the institution of this suit, the remainder was conveyed by P. to one M., for a recited consideration of $19,425. In February, 1887, the deception practised by P. as to the price of the land, and as to the change in the consideration of the deed to B. came to the knowledge of D., who thereupon wrote P., calling upon him to refund the overpayment in the purchase money, and to pay him one half of the increase in the amount of the consideration for the deed to B. P. made no payment, and commenced a correspondence which lasted until D. became possessed of knowledge of the reconveyance by B. to P. This bill in equity was then filed by D., praying for an accounting, and that he be decreed entitled to all the benefits of the original purchase, and that the deed to B., the deed from B. to P., and the deed from P. to M. be declared fraudulent; that P. be required to convey to D. so much of the premises as had not been conveyed to other parties for a valuable consideration; that he account to plaintiff for the sums received from such sales, and that he be restrained from selling other lots. The court below dismissed the bill on the ground that D. had elected to retain what he had received and to pursue his claim for moneys still due, and could not maintain a suit to set the whole transactions aside. *Held*, (1) That the plaintiff was entitled to a decree setting aside and annulling the deed purporting to have been executed by P. to M., the deed from B. to P., and the deed to B. from P. and D., leaving the title to the premises in question where it was prior to the execution of the last named deed; such decree to be without prejudice to any valid rights acquired by parties who purchased in good faith from P. while the fee was in him alone; (2) That the cause should be referred to a

commissioner for an accounting between D. and P. in respect of the sums paid by them, respectively, on the original purchase, as evidenced by the deed of 1885, to P. and D.; D. in such accounting to have credit for one half of all amounts received by P. on the sales by him of any of the lots into which the ten acres were subdivided, and P. to have credit for any sums paid by him in discharge of taxes or other charges upon the property. *Dickson* v. *Patterson*, 584.

See MANDATE, 1;
NOTICE.

ESTOPPEL.

1. If, upon the face of a record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded, and nothing conclusive in it when offered as evidence. *McCarty* v. *Lehigh Valley Railroad Co.*, 110.
2. An employé, paid by salary or wages, who devises an improved method of doing his work, using the property or labor of his employer to put his invention into practical form, and assenting to the use of such improvements by his employer, cannot entitle himself, by taking out a patent for such invention, to recover a royalty or other compensation for such use. *Gill* v. *United States*, 426.
3. A person looking on and assenting to that which he has power to prevent is precluded from afterwards maintaining an action for damages. *Ib.*
4. *Solomons* v. *United States*, 137 U. S. 342, affirmed and applied to this case. *Ib.*

EVIDENCE.

1. While it is competent, if a proper foundation has been laid, to impeach a witness by proving statements made by him, that cannot be done by proving statements made by another person, not a witness in the case. *Goldsby* v. *United States*, 70.
2. It is within the discretion of the trial court to allow the introduction of evidence, obviously rebuttal, even if it should have been more properly introduced in the opening; and, in the absence of gross abuse, its exercise of this discretion is not reviewable. *Ib.*
3. Rev. Stat. § 1033 does not require notice to be given of the names of witnesses, called in rebuttal. *Ib.*
4. If the defendant in a criminal case wishes specific charges as to the weight to be attached in law to testimony introduced to establish an alibi, he may ask the court to give them; and, if he fails to do so, the failure by the court to give such instruction cannot be assigned as error. *Ib.*
5. A certificate by the Commissioner of Pensions that an accompanying paper "is truly copied from the original in the office of the Commis-

sioner of Pensions," taken together with a certificate signed by the Secretary of the Interior and under the seal of that Department, certifying to the official character of the Commissioner of Pensions, is a substantial compliance with the provisions of Rev. Stat. § 882, and authorizes the paper so certified to be admitted in evidence. *Ballew* v. *United States*, 187.

6. Sundry exceptions as to the rulings of the court upon the admissibility of testimony considered, and held to be immaterial, or unfounded. *Haws* v. *Victoria Copper Mining Co.*, 303.
7. Certain testimony held not to prejudice the defendants, but rather tending to bear in their favor, if at all material. *Pierce* v. *United States*, 355.
8. Confessions are not rendered inadmissible by the fact that the parties are in custody, provided they are not extorted by inducements or threats. *Ib.*
9. When one party to an action has in his exclusive possession a knowledge of facts which would tend, if disclosed, to throw light upon the transactions which form the subject of controversy, his failure to offer them in evidence may afford presumptions against him. *Kirby* v. *Tallmadge*, 379.

See CRIMINAL LAW, 13, 14, 21;
ESTOPPEL, 1;
LOCAL LAW, 3.

EXTRADITION.

See HABEAS CORPUS, 3.

FLEEING FROM JUSTICE.

See CRIMINAL LAW, 2, 3.

FRAUD.

See EQUITY, 5.

FRAUDS, STATUTE OF.

See EQUITY, 2.

HABEAS CORPUS.

1. Under section 753 of the Revised Statutes, the courts of the United States have power to grant writs of *habeas corpus* for the purpose of inquiring into the cause of restraint of liberty of any person in jail, in custody under the authority of a State, in violation of the Constitution or of a law or treaty of the United States; but, except in cases of peculiar urgency, will not discharge the prisoner in advance of a final determination of his case in the courts of the State; and, even after

such final determination in those courts, will generally leave the petitioner to his remedy by writ of error from this court. *Whitten* v. *Tomlinson*, 231.

2. In a petition for a writ of *habeas corpus*, verified by oath, as required by Rev. Stat. § 754, only distinct and unambiguous allegations of fact, not denied by the return, nor controlled by other evidence, can be assumed to be admitted. *Ib.*
3. A warrant of extradition of the Governor of a State, issued upon the requisition of the Governor of another State, accompanied by a copy of an indictment, is *prima facie* evidence, at least, that the accused had been indicted and was a fugitive from justice; and, when the court in which the indictment was found had jurisdiction of the offence, is sufficient to make it the duty of the courts of the United States to decline interposition by writ of *habeas corpus*, and to leave the question of the lawfulness of the detention of the prisoner, in the State in which he was indicted, to be inquired into and determined, in the first instance, by the courts of the State. *Ib.*
4. A prisoner in custody under authority of a State will not be discharged by a court of the United States by writ of *habeas corpus*, because an indictment against him lacked the words "a true bill," or was found by the grand jury by mistake or misconception; or because a mittimus issued by a justice of the peace, under a statute of the State, upon application of a surety on a recognizance, and affidavit that the principal intended to abscond, does not conform to that statute. *Ib.*
5. In a petition for a writ of *habeas corpus*, verified by the petitioner's oath as required by Rev. Stat. § 754, facts duly alleged may be taken to be true, unless denied by the return or controlled by other evidence; but no allegation of fact in the petition can be assumed to be admitted, unless distinct and unambiguous. *Kohl* v. *Lehlback*, 293.
6. General allegations in such a petition that the petitioner is detained in violation of the Constitution and laws of the United States or of the particular State, and is held without due process of law, are averments of conclusions of law, and not of matters of fact. *Ib.*

See JURISDICTION, E, 2.

HUSBAND AND WIFE.

See CONSTITUTIONAL LAW, 7;
MORTGAGE;
NOTICE, 1.

INDIAN DEPREDATIONS.

See JURISDICTION, D.

INDIAN RESERVATION.

See PUBLIC LAND, 7.

INDICTMENT.

1. An indictment for perjury in a deposition made before a special examiner of the pension bureau which charges the oath to have been wilfully and corruptly taken before a named special examiner of the Pension Bureau of the United States, then and there a competent officer, and having lawful authority to administer said oath, is sufficient to inform the accused of the official character and authority of the officer before whom the oath was taken. *Markham* v. *United States*, 319.
2. In such an indictment it is not necessary to set forth all the details or facts involved in the issue as to the materiality of the statement, and as to the authority of the Commissioner of Pensions to institute the inquiry in which the deposition of the accused was taken. *Ib.*
3. The provision in Rev. Stat. § 1025 that "no indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant," is not to be interpreted as dispensing with the requirement in § 5396 that an indictment for perjury must set forth the substance of the offence charged. *Ib.*
4. An indictment for perjury that does not set forth the substance of the offence will not authorize judgment upon verdict of guilty. *Dunbar* v. *United States*, 156 U. S. 185, affirmed. *Ib.*
5. When two counts in an indictment for murder differ from each other only in stating the manner in which the murder was committed, the question whether the prosecution shall be compelled to elect under which it will proceed is a matter within the discretion of the trial court. *Pierce* v. *United States*, 355.

See CRIMINAL LAW, 1, 10;
HABEAS CORPUS, 3, 4.

INSOLVENT DEBTOR.

See LOCAL LAW, 1 to 7.

IOWA.

See BOUNDARY LINE.

JUDGMENT.

See CONSTITUTIONAL LAW, 7.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

1. In the trial of a person accused of crime the exercise by the trial court of its discretion to direct or refuse to direct witnesses for the defend-

ant to be summoned at the expense of the United States is not subject to review by this court. *Goldsby* v. *United States*, 70.

2. Where the record shows that the only matter tried and decided in the Circuit Court was a demurrer to a plea to the jurisdiction, and the petition upon which the writ of error was allowed asked only for the review of the judgment that the court had no jurisdiction of the action, the question of jurisdiction alone is sufficiently certified to this court, as required by the act of March 3, 1891, c. 517, § 5. *Interior Construction & Improvement Co.* v. *Gibney*, 217.
3. In an action brought in a state court against a railroad company for ejecting the plaintiff from a car, the defence was that a silver coin, offered by him in payment of his fare, was so abraded as to be no longer legal tender. The Supreme Court of the State, after referring to the Congressional legislation on the subject, held that, "so long as a genuine silver coin is worn only by natural abrasion, is not appreciably diminished in weight, and retains the appearance of a coin duly issued from the mint, it is a legal tender for its original value." The railroad company, although denying the plaintiff's claim, set up no right under any statute of the United States in reference to the effect of the reduction in weight of silver coin by natural abrasion. Judgment being given for plaintiff, the railroad company sued out a writ of error for its review. *Held*, that this court was without jurisdiction. *Jersey City & Bergen Railroad Co.* v. *Morgan*, 288.
4. On an appeal from a judgment of a territorial court, this court is limited to determining whether the facts found are sufficient to sustain the judgment rendered, and to reviewing the rulings of the court on the admission or rejection of testimony, when exceptions thereto have been duly taken. *Haws* v. *Victoria Copper Mining Co.*, 303.
5. In an action in the state courts of New York against the collector of the port of New York, the health officer of that port, and the owners of warehouses employed for public storage, to recover damages suffered by an importer of rags by reason of their having been ordered to the warehouses by the collector and disinfected there, and detained until the charges for disinfection and storage were paid, a ruling by the highest court of the State that the direction of the collector to send the rags to the storehouses was pursuant to the requirement that they should be disinfected, and was in aid of the health officer in the execution of his official power by the observance of the regulations made by him — that the collector gave no order for their disinfection — that the health officer gave no such order — that the defendants assumed to disinfect them without authority, and hence that their charges were illegal — but that, as the collector had properly sent the goods to the warehouses for such action as the health authorities might see fit to take, the plaintiffs became liable for storage and lighterage, presents no Federal question for review by this court. *Bartlett* v. *Lockwood*, 357.

6. As this appeal was taken long after the act establishing the Circuit Courts of Appeals went into effect, and as there is an entire absence of a certificate of a question of jurisdiction, the appeal is dismissed for want of jurisdiction. *In re Lehigh Mining Co.*, 156 U. S. 322, and *Shields* v. *Coleman*, 157 U. S. 628, distinguished from this case. *Van Wagenen* v. *Sewall*, 369.

7. Even if an examination of the record would have disclosed a question of jurisdiction, which is very doubtful, this court cannot be required to search the record for it; as it was the object of the fifth section of the act of 1891 to have the question of jurisdiction plainly and distinctly certified, or at least to have it appear so clearly in the decree of the court below that no other question was involved, that no further examination of the record would be necessary. *Ib.*

8. The decree, to review which this writ of error was sued out, was not a final decree, and this court cannot take jurisdiction. *Union Mutual Life Ins. Co.* v. *Kirchoff*, 374.

9. The rule is well nigh universal that, if a case be remanded by an appellate court to the court below for further judicial proceedings, in conformity with the opinion of the appellate court, the decree is not final. *Ib.*

10. This court has no power to review a decision of a state court that the averments of an answer in a pending case set forth no defence to the plaintiff's claim. *Iowa Central Railway Co.* v. *Iowa*, 389.

11. If a defendant, among other defences, in various forms, and upon several grounds, objects to the jurisdiction of the court, and final judgment is rendered for the plaintiff, and, upon a petition referring to all the proceedings in detail, and asking for a review of all the rulings of the court upon the question of jurisdiction raised in the papers on file, a writ of error is allowed generally, without formally certifying or otherwise specifying a definite question of jurisdiction, no question of jurisdiction is sufficiently certified to this court under the act of March 3, 1891, c. 517, § 5. *Chappell* v. *United States*, 499.

12. Upon a writ of error under the act of March 3, 1891, c. 517, § 5, in a case in which the constitutionality of a law of the United States was drawn in question, this court has power to dispose of the whole case, including all questions, whether of jurisdiction or of merits. *Ib.*

13. If the decree of a Circuit Court of Appeals is final under the sixth section of the judiciary act of March 3, 1891, a decree upon an intervention in the same suit must be regarded as equally so; and even if the decree on such proceedings may be in itself independent of the controversy between the original parties, yet if the proceedings are entertained in the Circuit Court because of its possession of the subject of the ancillary or supplemental application, the disposition of the latter must partake of the finality of the main decree, and cannot be brought here on the theory that the Circuit Court exercised jurisdiction independently of the ground of jurisdiction which was orig-

inally invoked as giving cognizance to that court as a court of the United States. *Gregory* v. *Van Ee*, 643.

14. By authority of the directors of a national bank in Chicago, which had acquired some of its own stock, the individual note of its cashier, secured by a pledge of that stock was, through a broker in Portage, sold to a bank there. The note not being paid at maturity the Portage bank sued the Chicago bank in assumpsit, declaring specially on the note, which it alleged was made by the bank in the cashier's name, and also setting out the common counts. The bank set up that the purchase of its own stock was illegal and that money borrowed to pay a debt contracted for that purpose was equally forbidden by Rev. Stat. § 5201. The trial court was requested by the Chicago bank to rule several propositions of law, and declined to do so. Judgment was then entered for the Portage bank. The Supreme Court of the State of Illinois held that the Portage bank was entitled to recover under the common counts, and that it was not necessary to consider whether the trial court had ruled correctly on the propositions of law submitted to it. *Held*, that that court in rendering such judgment, denied no title, right, privilege, or immunity specially set up or claimed under the laws of the United States, and that the writ of error must be dismissed. *Chemical Bank* v. *City Bank of Portage*, 646.

See CASES AFFIRMED, 3;
NEW TRIAL.

B. JURISDICTION OF CIRCUIT COURTS OF APPEALS.

1. Circuit Courts of Appeals have no jurisdiction over the judgments of territorial courts in capital cases, and in cases of infamous crimes. *Folsom* v. *United States*, 121.
2. This construction of the statute is imperative from its language, and is not affected by the fact that convictions for minor offences are reviewable on a second appeal, while convictions for capital and infamous crimes are not so reviewable. *Ib.*
3. Under the act of March 3, 1887, c. 373, as corrected by the act of August 13, 1888, c. 866, a defendant, who enters a general appearance, in an action between citizens of different States, thereby waives the right afterwards to object that he or another defendant is not an inhabitant of the district in which the action is brought. *Interior Construction & Improvement Co.* v. *Gibney*, 217.

See JURISDICTION, A, 13.

C. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. It is established doctrine, to which the court adheres, that the constitutional privilege of a grantee or purchaser of property, being a citizen of one of the States, to invoke the jurisdiction of a Circuit Court of the United States for the protection of his rights as against a citizen

of another State — the value of the matter in dispute being sufficient for the purpose — cannot be affected or impaired merely because of the motive that induced his grantor to convey, or his vendee to sell and deliver, the property, provided such conveyance or such sale and delivery was a real transaction by which the title passed without the grantor or vendor reserving or having any right or power to compel or require a reconveyance or return to him of the property in question. *Lehigh Mining & Manufacturing Co.* v. *Kelly*, 327.

2. Citizens of Virginia were in possession of lands in that State, claiming title, to which also a corporation organized under the laws of Virginia had for some years laid claim. In order to transfer the corporation's title and claim to a citizen of another State, thus giving a Circuit Court of the United States jurisdiction over an action to recover the lands, the stockholders of the Virginia corporation organized themselves into a corporation under the laws of Pennsylvania, and the Virginia corporation then conveyed the lands to the Pennsylvania corporation, and the latter corporation brought this action against the citizens of Virginia to recover possession of the lands. No consideration passed for the transfer. Both corporations still exist. *Held*, that these facts took this case out of the operation of the established doctrine above stated and made of the transaction a mere device to give jurisdiction to the Circuit Court, and that it was a fraud upon that court, as well as a wrong to the defendants. *Ib.*

3. Circuit Courts of the United States have jurisdiction of actions in which the United States are plaintiffs, without regard to the value of the matter in dispute. *United States* v. *Sayward*, 493.

See CORPORATION, 1;
HABEAS CORPUS, 1;
JURISDICTION, A, 13.

D. JURISDICTION OF THE COURT OF CLAIMS.

1. The act of March 3, 1891, c. 538, 26 Stat. 851, "to provide for the adjudication and payment of claims arising from Indian depredations," confers, by § 1, clause 1, no jurisdiction upon the Court of Claims to adjudicate upon such a claim, made by a person who was not a citizen of the United States at the time when the injury was suffered, although he subsequently became so: nor, by § 1, clause 2, unless the claim was one which, on March 3, 1885, had been examined and allowed by the Department of the Interior or was then pending there for examination. *Johnson* v. *United States*, 546.

2. Any claim made against an Executive Department, "involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases, without

regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States," may be transmitted to the Court of Claims by the head of such Department under Rev. Stat. § 1063, for final adjudication; provided, such claim be not barred by limitation, and be one of which, by reason of its subject-matter and character, that court could take judicial cognizance at the voluntary suit of the claimant. *United States* v. *New York*, 598.

3. Any claim embraced by Rev. Stat. § 1063, without regard to its amount, and whether the claimant consents or not, may be transmitted under the act of March 3, 1883, c. 116, to the Court of Claims by the head of the Executive Department in which it is pending, for a report to such Department of facts and conclusions of law for "its guidance and action." *Ib.*
4. Any claim embraced by that section may, in the discretion of the Executive Department in which it is pending, and with the express consent of the plaintiff, be transmitted to the Court of Claims, under the act of March 3, 1887, c. 359, without regard to the amount involved, for a report, merely advisory in its character, of facts or conclusions of law. *Ib.*
5. In every case, involving a claim of money, transmitted by the head of an Executive Department to the Court of Claims under the act of March 3, 1883, c. 116, a final judgment or decree may be rendered when it appears to the satisfaction of the court, upon the facts established, that the case is one of which the court, at the time such claim was filed in the Department, could have taken jurisdiction, at the voluntary suit of the claimant, for purposes of final adjudication. *Ib.*
6. Whether the words "or matter" in the second section of that act embrace any matters, except those involving the payment of money, and of which the Court of Claims under the statutes regulating its jurisdiction could, at the voluntary suit of the claimant, take cognizance for purposes of final judgment or decree, is not considered. *Ib.*
7. As the claim of the State of New York, the subject of controversy in this case, was presented to the Treasury Department before it was barred by limitation, its transmission by the Secretary of the Treasury to the Court of Claims for adjudication was only a continuation of the original proceeding commenced in that Department in 1862; and the delay by the Department in disposing of the matter before the expiration of six years after the cause of action accrued, could not impair the rights of the State. *Ib.*
8. The $91,320.84 paid by the State of New York for interest upon its bonds issued in 1861 to defray the expenses to be incurred in raising troops for the national defence was a principal sum which the United States agreed to pay, and not interest within the meaning of the rule prohibiting the allowance of interest accruing upon claims against the United States prior to the rendition of judgment thereon. *Ib.*

9. The claim of the State of New York for money paid on account of interest to the commissioners of the Canal Fund, is not one against the United States for interest as such, but is a claim for costs, charges, and expenses properly incurred and paid by the State in aid of the general government, and is embraced by the act of Congress declaring that the States would be indemnified by the general government for money so expended. *Ib.*

E. JURISDICTION OF STATE COURTS.

1. It is for the state court, having jurisdiction of the offence charged in a proceeding before it, and of the accused, to determine whether the indictment sufficiently charges the offence of murder in the first degree. *Bergemann* v. *Backer*, 157 U. S. 655, affirmed and applied. *Kohl* v. *Lehlback*, 293.
2. Independently of constitutional or statutory provisions allowing it, an appeal to a higher court of a State from a judgment of conviction in a lower court is not a matter of absolute right; and as it may be accorded upon such terms as the State thinks proper, the refusal to grant a writ of error or to stay an execution does not warrant a Federal court to interfere in the prisoner's behalf by writ of *habeas corpus*. *Ib.*
3. When one of the jury by which a person accused of murder is convicted is an alien, and the accused takes no exception to his acting as a juror and makes no challenge, and on trial is convicted and sentenced, it is for the state court to determine whether the verdict shall be set aside on the ground that he was tried by improper persons, as the disqualification of alienage is only cause of challenge, which may be waived, either voluntarily, or through negligence, or through want of knowledge. *Ib.*

JURY TRIAL.

See CONSTITUTIONAL LAW, 3.

LACHES.

See EQUITY, 3.

LEASE.

See CONTRACT, 2;
CORPORATION, 2, 3.

LIGHT-HOUSE.

1. A petition for the condemnation of land for a light-house, filed by the Attorney General upon the application of the Secretary of the Treasury, under the act of August 1, 1888, c. 728, should be in the name of the United States. *Chappell* v. *United States*, 499.

2. The only trial by jury required in proceedings in a court of the United States for the condemnation of land under the act of August 1, 1888, c. 728, is a trial at the bar of the court upon the question of damages to the owner of the land. *Ib.*

See CONSTITUTIONAL LAW, 6.

LOCAL LAW.

1. As the controversy below in this case was what is known in the jurisprudence of Alabama as a statutory claim suit, growing out of attachment proceedings, the law of Alabama, as interpreted by the Supreme Court of that State in its rulings, will be followed here. *Bamberger* v. *Schoolfield*, 149.
2. Under the law of Alabama a debtor has the right to prefer a creditor, either by paying his debt in money, or by paying it by a sale and transfer of property to the debtor; and if such sale and transfer are real, and are made in good faith, for a fair price, if they are honestly executed to extinguish the debt and do extinguish it, and contain no reservation of an interest or benefit in favor of the vendor, they are valid, and pass the property to the vendee, even if it further appears that the vendor was insolvent at the time, that the vendee knew that fact, and that, in making the sale the vendor had a fraudulent intent to defraud his other creditors by the preference, and the remaining creditors would, in consequence of the sale, be unable to obtain the payment of their debts. *Ib.*
3. In such case if the fact of indebtedness, and the fact that the goods were sold in payment thereof at their reasonable fair value are established to the satisfaction of the jury, and if it be contended, in avoidance thereof, that the trade was simulated, and that there was a secret trust or benefit reserved to the debtor, the burden is on the contesting creditor to establish it. *Ib.*
4. The employment of such a vendor by the vendee in a clerical capacity, and the subsequent transfer of the property by the vendee to the wife of the vendor, though circumstances which may be considered by the jury in determining the validity of the sale and transfer, do not of themselves render them illegal in law. *Ib.*
5. When a request for instructions presents a supposititious case, for the establishment of which there is no proof of any kind in the case, it should be refused. *Ib.*
6. The second section of the fourteenth article of the constitution of Alabama, and the act of the legislature of that State of February 28, 1887, have been held by the courts of Alabama as not intended to interfere with matters of commerce between the States, and to have no application to transactions such as here under consideration. *Ib.*
7. There was no error in the instructions as to the bearing on the rights

of the parties of the letter written by the Memphis firm and the settlement made by the latter after it. *Ib.*

District of Columbia. *See* NOTICE, 2, 3.
Illinois. *See* JURISDICTION, A, 14.
Kansas. *See* NATIONAL BANK.
Louisiana. *See* MORTGAGE.

MANDAMUS.

See MANDATE, 1.

MANDATE.

1. When a case has once been decided by this court on appeal, and remanded to the Circuit Court, that court must execute the decree of this court according to the mandate. If it does not, its action may be controlled, either by a new appeal, or by writ of mandamus; but it may consider and decide any matters left open by the mandate, and its decision of such matters can be reviewed by a new appeal only. The opinion delivered by this court, at the time of rendering its decree, may be consulted to ascertain what was intended by the mandate; and, either upon an application for a writ of mandamus, or upon a new appeal, it is for this court to construe its own mandate. *In re Sanford Fork & Tool Co.*, 247.
2. When the Circuit Court, at a hearing upon exceptions to an answer in equity, sustains the exceptions, and (the defendant electing to stand by his answer) enters a final decree for the plaintiff; and this court, upon appeal, orders that decree to be reversed, and the cause remanded for further proceedings not inconsistent with its opinion, the plaintiff is entitled to file a replication, and may be allowed by the Circuit Court to amend his bill. *Ib.*

MARRIED WOMAN.

See CONSTITUTIONAL LAW, 7;
MORTGAGE;
NOTICE, 1.

MASTER AND SERVANT.

See RAILROAD, 1.

MATE.

See OFFICERS IN THE NAVY.

MINERAL LAND.

1. The decree and complaint, taken together, fully describe and furnish ample means for identification of the property to which the defend-

ant in error was adjudged to be entitled. *Haws* v. *Victoria Copper Mining Co.*, 303.

2. The contention that the complaint did not aver a discovery of a vein or lode prior to the location under which the plaintiffs in error claim is wholly without merit. *Ib.*
3. Likewise is the contention without merit that the discovery under which the defendant in error claims was of only one vein. *Ib.*
4. Possession alone is adequate against a mere intruder or trespasser, without even color of title, and especially so against one who has taken possession by force and violence. *Ib.*

MISSOURI.

See BOUNDARY LINE.

MORTGAGE.

In 1868, Y., a citizen of Louisiana, being then married, mortgaged his interest in certain real estate in that State to E. H., his wife joining in the mortgage. In 1870 the father of Mrs. Y. died, leaving a policy of insurance in her favor. Y. collected this sum and converted it to his own use and the use of the community. In 1876, by a transaction between Y. and the residuary legatee of E. H., who was also indebted to Y., her said indebtedness was discharged, and Y.'s interest in that mortgage was assigned to Mrs. Y. in replacement of her paraphernal moneys and property, so secured and converted by her husband. In 1881 Mrs. Y. became entitled to a further sum, on the final settlement of her father's estate, which was in like manner received by Y., and converted to his own use and that of the community. In 1881, on the petition of Mrs. Y., filed in 1881 in a suit against her husband for a dissolution of the community and a separation of property, a decree to that effect was made by the state court; and it was further adjudged and decreed that Y. was indebted to Mrs. Y. in the sums so received by him from her father's estate, with recognition of mortgage on the property described, and the property be sold to satisfy said judgment and costs. In 1882, in order to enable Y. to borrow from N. & Co., Mrs. Y. executed a mandate and power of attorney, authorizing the cancelling and erasure of the mortgage to E. H. What was done under that power was afterwards claimed by Y. and by Mrs. Y. not to amount to such cancellation, and by N. & Co. to be effective. A mortgage to N. & Co. was then executed by Y., and the inscription of Mrs. Y.'s mortgage was then renewed. In 1883 N. & Co. commenced proceedings to foreclose their mortgage, (Mrs. Y. not being made a party to the suit,) and obtained a decree of foreclosure in 1886. The property was duly appraised according to the law of Louisiana, and at the sale no sufficient bid was made. It was then advertised for sale on a credit of twelve

months. In 1887, Y. notified the marshal that Mrs. Y. had an incumbrance on the property prior to the mortgage to N. & Co., (stating the amount of it,) and that a sale for less than that amount would be invalid. Notwithstanding this notice, a sale was made for a less sum. This sale was attacked by Y. and Mrs. Y. by various proceedings set forth in the opinion of the court, which resulted in a decree setting aside the sale, and adjudging that the attempted renunciation by Mrs. Y. of her special mortgage was invalid, and that that mortgage should be recognized as the first mortgage on the property, superior in rank to the mortgage of N. & Co. *Held*, (1) That Mrs. Y. must stand upon her legal mortgage, resulting from the receipt of her paraphernal property, and recognized by the judgment of 1881, decreeing a separation of property; or upon a judicial mortgage arising from that judgment; or on the contract between herself and the residuary legatee of E. H.; (2) That if her mortgage be held to be legal or judicial, its existence was not a bar to the confirmation of a sale for an amount insufficient to satisfy it, and that it could not rank the special conventional mortgage of N. & Co.; (3) That by the transaction between the residuary legatee of E. H. and Mrs. Y., the respective debts were discharged by agreement and compensated each other, and when the principal obligation was thus discharged, the mortgage fell with it, and would not be revived, although the indebtedness were reacknowledged; (4) That the decree below should be reversed. *Nalle* v. *Young*, 624.

MULTIFARIOUSNESS.

See EQUITY, 4.

NATIONAL BANK.

The single fact that the statutes of Kansas regulating the assessment and taxation of shares in national banks permit some debts to be deducted from some moneyed capital, but not from that which is invested in the shares of national banks, is not sufficient to show that the amount of moneyed capital in the State of Kansas from which debts may be deducted, as compared with the moneyed capital invested in shares of national banks, is so large and substantial as to amount to an illegal discrimination against national bank shareholders, in violation of the provisions of Rev. Stat. § 5219. *First National Bank of Garnett* v. *Ayers*, 660.

See JURISDICTION, A, 14.

NAVY.

See OFFICERS IN THE NAVY.

NEGLIGENCE.

See RAILROAD, 2, 3.

NEW TRIAL.

This case comes within the general rule that the allowance or refusal of a new trial rests in the sound discretion of the court to which the application is addressed. *Haws* v. *Victoria Copper Mining Co.*, 303.

NOTICE.

1. Where land is used for the purpose of a home, and is jointly occupied by husband and wife, neither of whom has title by record, a person proposing to purchase is bound to make some inquiry as to their title. *Kirby* v. *Tallmadge*, 379.
2. The possession of real estate in the District of Columbia, under apparent claim of ownership, is notice to purchasers of the interest the person in possession has in the fee, whether legal or equitable in its nature, and of all facts which the proposed purchaser might have learned by due inquiry. *Ib.*
3. The principle applies with peculiar cogency to a case like the present, where the slightest inquiry would have revealed the facts, and where the purchaser deliberately turned his back upon every source of information; and a purchase made under such circumstances does not clothe the vendee with the rights of a *bona fide* purchaser without notice. *Ib.*

OFFICERS IN THE NAVY.

Mates are petty officers, and as such are entitled to rations or commutation therefor. *United States* v. *Fuller*, 593.

PATENT FOR INVENTION.

The inventions claimed in the third and fourth claims of letters patent No. 339,913 dated April 13, 1886, issued to Harry C. McCarty for an improvement in car trucks, if not void for want of novelty, as the application of an old process or machine to a similar or analogous subject, with no change in the manner of application, and no result substantially distinct in its nature, were inventions of such a limited character as to require a narrow construction; and, being so construed, the letters patent are not infringed by the bolsters used by the appellee. *McCarty* v. *Lehigh Valley Railroad Co.*, 110.

See ESTOPPEL, 2, 3, 4.

PENSION.

See CRIMINAL LAW, 4.

PERJURY.

See INDICTMENT.

PRACTICE.

1. There is nothing in this case to take it out of the ruling in *Isaacs* v. *United States*, 159 U. S. 487, that an application for a continuance is not ordinarily subject to review by this court. *Goldsby* v. *United States*, 70.
2. The court below can, before a new trial, authorize the allegation as to the decision by the Secretary of War upon the necessity of taking the land to be amended, if necessary. *United States* v. *Gettysburg Electric Railway Company*, 668.
3. The court adheres to its opinion and decision in this case, 159 U. S. 349, and corrects an error of statement in that opinion, which in no way affects the conclusions there reached. *Sioux City & St. Paul Railroad Co.* v. *United States*, 686.

See ASSIGNMENT OF ERROR; CRIMINAL LAW, 11; EVIDENCE, 4; INDICTMENT, 5; JURISDICTION, B, 3; MANDATE, 1, 2; NEW TRIAL.

PRESUMPTION.

See EVIDENCE, 9.

PUBLIC LAND.

1. The provision in the act of March 3, 1875, c. 152, 18 Stat. 482, granting the right of way through the public lands of the United States to any railroad duly organized under the laws of any State or Territory, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same, plainly means that no corporation can acquire a right of way upon a line not described in its charter or articles of incorporation. *Washington & Idaho Railroad Co.* v. *Cœur d'Alene Railway & Navigation Co.*, 77.
2. A railroad company whose road is laid out so as, under the provisions of the act of March 3, 1875, 18 Stat. 482, entitled "An act granting to railroads the right of way through the public lands of the United States," to cross a part of such public unsurveyed domain, cannot take part thereof in the actual possession and occupation of a settler, who is entitled to claim a preëmption right thereto when the proper time shall come, and who has made improvements on the land so occupied by him, without making proper compensation therefor. *Washington & Idaho Railroad Co.* v. *Osborn*, 103.
3. The act of March 3, 1877, c. 107, 19 Stat. 377, providing for the sale of desert lands in certain States and Territories, does not embrace alternate sections, reserved to the United States, along the lines of railroads for the construction of which Congress has made grants of lands. *United States* v. *Healey*, 136.

4. Cases initiated under that act, but not completed, by final proof, until after the passage of the act of March 3, 1891, c. 561, 26 Stat. 1095, were left by the latter act, as to the price to be paid for the lands entered, to be governed by the law in force at the time the entry was made. *Ib.*

5. A voluntary relinquishment of his entry by a homestead entryman made in 1864 was a relinquishment of his claim to the United States, and operated to restore the land to the public domain. *Keane* v. *Brygger*, 276.

6. Prior to 1864 H. made a homestead entry of the land in controversy in this action. In February, 1864, he relinquished his right, title, and interest in the same. In March, 1864, the University Commissioners of Washington Territory, under the act of July 17, 1854, c. 84, selected this as part of the Territory's lands for university purposes, and on the 10th day of that month conveyed the tract to R., who, on the 4th of April, 1876, conveyed it to B. *Held*, that the title so acquired should prevail over a title acquired by homestead entry in October, 1888. *Ib.*

7. The Indian reservation at Sault Ste. Marie, under the treaty of June 26, 1820, with the Chippewas, continued until extinguished by the treaty of August 2, 1855; and upon the extinguishment of the Indian title at that time the land included in the reservation was made, by § 10 of the act of September 4, 1841, not subject to preëmption. *Spalding* v. *Chandler*, 394.

See MINERAL LAND;
REMOVAL OF CAUSES, 1.

RAILROAD.

1. A force of five men, in the night service of a railroad company, was employed in uncoupling from the rear of trains cars which were to be sent elsewhere, and in attaching other cars in their places. The force was under the orders of O., who directed G. what cars to uncouple, and K. what cars to couple. As the train backed down, G. uncoupled a car as directed. K. in walking to the car which was to be attached to the train in its place, caught his foot in a switch and fell across the track. As the train was moving towards him he called out. The engine was stopped, but the rear car, having been uncoupled by G., continued moving on, and passed over him, inflicting severe injuries. K. sued the railroad company to recover damages for the injuries thus received. *Held*, that K. and O. were fellow-servants, and that the railroad company was not responsible for any negligence of O. in not placing himself at the brake of the uncoupled car. *Central Railroad Co.* v. *Keegan*, 259.

2. In an action against a railroad company brought by one of its employés to recover damages for injuries inflicted while on duty, where the evidence is conflicting it is the province of the jury to pass upon the

questions of negligence; but where the facts are undisputed or clearly preponderant, they are questions of law, for the court. *Southern Pacific Company* v. *Pool*, 438.

3. In this case, after a review of the undisputed facts, it is held that there can be no doubt that the injury which formed the ground for this action was the result of the inexcusable negligence of the company's servant. *Ib.*

See CORPORATION, 3; PUBLIC LAND, 1, 2; JURISDICTION, A, 3; REMOVAL OF CAUSES; UNION PACIFIC RAILWAY COMPANY.

REAL ESTATE.

See NOTICE.

REASONABLE DOUBT.

See CRIMINAL LAW, 19, 20.

REHEARING.

See PRACTICE, 3.

REMOVAL OF CAUSES.

1. An action commenced May 27, 1889, in the District Court of the Territory of Idaho, before the admission of Idaho as a State, by a corporation organized under the laws of Washington Territory, against a corporation organized under the laws of Montana Territory, and against a railroad company organized under the laws of the United States, upon which latter company service had been made and filed, was, after the admission of Idaho as a State, removable to the Circuit Court of the United States for that circuit both upon the ground of diversity of citizenship of the territorial corporations, and upon the ground that the railroad company was incorporated under a law of the United States; and, so far as the latter ground of removal is concerned, it is not affected by the fact that the railroad company afterwards ceased to take an active part in the case, as the jurisdictional question must be determined by the record at the time of the transfer. *Washington & Idaho Railroad Co.* v. *Cœur d'Alene Railway & Navigation Co.*, 77.

2. The decision of the Supreme Court of Nebraska that the Missouri Pacific company could not maintain its claim for damages because its possession had not been disturbed or its title questioned, involved no Federal question; and where a decision of a state court thus rests on independent ground, not involving a Federal question, and broad enough to maintain the judgment, the writ of error will be dismissed by this court, without considering any Federal question that may also

have been presented. *Missouri Pacific Railway Company* v. *Fitzgerald*, 556.

3. In deciding adversely to the claim of the plaintiff in error that by reason of the process of garnishment in attachment against the Missouri Pacific company, in the action removed to the Circuit Court from the state court, the Circuit Court acquired exclusive jurisdiction over the moneys due the Construction company from the Pacific company, the Supreme Court of Nebraska did not so pass upon a Federal question as to furnish ground for the interposition of this court. *Ib.*
4. In appointing a receiver of the Construction company to collect the amount of the decree against the Missouri Pacific company, the Supreme Court of Nebraska denied no Federal right of the Missouri Pacific company. *Ib.*
5. When a party to an action in a state court moves there for its removal to the Circuit Court of the United States, and the motion is denied, and the party nevertheless files the record in the Circuit Court, and the Circuit Court proceeds to final hearing, (the state court meanwhile suspending all action,) and remands the case to the state court, the order refusing the removal worked no prejudice, and the error, in that regard, if any, was immaterial. *Ib.*
6. An order of the Circuit Court remanding a cause cannot be reviewed in this court by any direct proceeding for that purpose. *Ib.*
7. If a state court proceeds to judgment in a cause notwithstanding an application for removal, its ruling in retaining the case will be reviewable here after final judgment under Rev. Stat. § 709. *Ib.*
8. If a case be removed to the Circuit Court and a motion to remand be made and denied, then after final judgment the action of the Circuit Court in refusing to remand may be reviewed here on error or appeal. *Ib.*
9. If the Circuit Court and the state court go to judgment, respectively, each judgment is open to revision in the appropriate mode. *Ib.*
10. If the Circuit Court remands a cause and the state court thereupon proceeds to final judgment, the action of the Circuit Court is not reviewable on writ of error to such judgment. *Ib.*
11. A state court cannot be held to have decided against a Federal right when it is the Circuit Court, and not the state court, which has denied its possession. *Ib.*

SEAL.

Whether an instrument is under seal or not is a question for the court upon inspection; but whether a mark or character shall be held to be a seal, depends upon the intention of the executant, as shown by the paper. *Jacksonville, Mayport &c. Railway* v. *Hooper*, 514.

SERVITUDE.

See CONSTITUTIONAL LAW, 4, 5.

STATUTE.

A. Construction of Statutes.

1. When a court of law is construing an instrument, whether a public law or a private contract, it is legitimate, if two constructions are fairly possible, to adopt that one which equity would favor. *Washington & Idaho Railroad Co.* v. *Cœur d'Alene Railway & Navigation Co.*, 77.
2. When the practice in a department in interpreting a statute is uniform, and the meaning of the statute, upon examination, is found to be doubtful or obscure, this court will accept the interpretation by the department as the true one; but where the departmental practice has not been uniform, the court must determine for itself what is the true interpretation. *United States* v. *Healey*, 136.

See Eminent Domain;
Jurisdiction, B, 1.

B. Statutes of the United States.

See Claims against the United States;
Constitutional Law, 6;
Corporation, 1;
Criminal Law, 1, 2, 3, 4, 6, 11;
Evidence, 3, 5;
Habeas Corpus, 1, 2, 5;
Indictment, 3;
Jurisdiction, A, 2, 7, 11, 12, 13; B, 3; D, 1 to 6.
Light-house, 1, 2;
National Bank;
Public Land, 1, 2, 3, 4, 6, 7;
Removal of Causes, 7;
Union Pacific Railway Company, 1, 3, 5, 6, 7.

C. Statutes of States and Territories.

Alabama. *See* Local Law, 6.
Kansas. *See* National Bank.
Louisiana. *See* Constitutional Law, 4.

TAXATION.

See National Bank.

TRADE-MARK.

See Corporation, 1.

TRESPASS.

See Mineral Land, 4.

UNION PACIFIC RAILWAY COMPANY.

1. The objects which Congress sought to accomplish by the act of July 1, 1862, c. 120, 12 Stat. 489, granting a subsidy to aid in the construction of both a railroad and a telegraph line from the Missouri River to the Pacific Ocean, and by the act of July 2, 1864, c. 216, 13 Stat.

356, amendatory thereof, were the construction, the maintenance and the operation of both a railroad and a telegraph line between those two points; the governmental aid was extended for the purpose of accomplishing all these important results; and there is nothing in subsequent legislation to indicate a change of this purpose. *United States* v. *Union Pacific Railway Co.*, 1.

2. The provisions in those acts permitting the railroad company to arrange with certain telegraph companies for placing their lines upon and along the route of the railroad, and its branches, did not affect the authority of Congress, under its reserved power, to require the maintenance and operation by the railroad company itself, through its own officers and employés, of a telegraph line over and along its main line and branches. *Ib.*

3. An arrangement between the railroad company and the telegraph company, such as was permitted by the 19th section of the act of July 1, 1862, and by the 4th section of the act of July 2, 1864, c. 220, known as the Idaho Act, could have no other effect than to relieve the railroad company from any present duty itself to construct a telegraph line to be used under the franchises granted and for the purposes indicated by Congress. No arrangement of the character indicated by Congress could have been made except in view of the possibility of the exercise by Congress of the power reserved to add to, or amend the act that permitted such arrangement. *Ib.*

4. It was not competent for Congress under its reserved power to add to, alter, or amend these acts, to impose upon the railroad company duties wholly foreign to the objects for which it was created or for which governmental aid was given, nor, by any alteration or amendment of those acts, destroy rights actually vested, nor disturb transactions fully consummated. With the policy of such legislation the courts have nothing to do. *Ib.*

5. The provision in the act of August 7, 1888, c. 772, 25 Stat. 382, requiring all railroad and telegraph companies to which the United States have granted subsidies, to "forthwith and henceforward, by and through their own respective corporate officers and employés, maintain and operate, for railroad, governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants," is a valid exercise of the power reserved by Congress. *Ib.*

6. Since the passage of the act of July 24, 1866, c. 230, the provisions of which were embodied in the Revised Statutes Title LXV.; Telegraphs, no railroad company operating a post-road of the United States, over which interstate commerce is carried on, can bind itself, by agreement, to exclude from its roadway any telegraph company, incorporated under the laws of a State, that has accepted the provisions of that act, and desires to use such roadway for its line in

such manner as will not interfere with the ordinary travel thereon. *Ib.*

7. The agreement of October 1, 1866, between the Union Pacific Railway Company, Eastern Division, and the Western Union Telegraph Company gave the telegraph company the absolute control of all telegraphic business on the routes of the railway company, and consequently tended to make the act of July 24, 1866, c. 230, 14 Stat. 221, ineffectual and was hostile to the object contemplated by Congress; and, being thus in its essential provisions invalid, it was not binding upon the railway company. *Ib.*
8. The agreements of September 1, 1869, and December 14, 1871, between the Union Pacific Railroad Company and the Atlantic and Pacific Telegraph Company were void. *Ib.*
9. The agreement of July 1, 1887, between the Union Pacific Railway Company and the Western Union Telegraph Company is illegal, not only to the extent it assumes to give to the telegraph company exclusive rights and advantages in respect of the use of the way of the railroad company for telegraph purposes, but also because, in effect, it transfers to the telegraph company the telegraphic franchise granted it by the United States, which was not permitted by the acts of Congress defining the obligations of railroad companies that had accepted the bounty of the government. *Ib.*
10. While the United States might proceed by mandamus against the railway company to compel it to perform the duties imposed by its charter, it has the further right, in this suit, to ask the interposition of a court of equity to compel a cancellation of the agreements under which the telegraph company asserts rights inconsistent with the several acts of Congress, and the final decree in such a suit may require the railway company to obey the directions of Congress as given in those acts. *Ib.*

See WESTERN UNION TELEGRAPH COMPANY.

UNITED STATES.

See JURISDICTION, C, 3.

VERDICT.

See CRIMINAL LAW, 5.

WAIVER.

See JURISDICTION, B, 3.

WESTERN UNION TELEGRAPH COMPANY.

Although the United States was entitled to retain and apply, as directed by Congress, all sums due from the Government, on account of the use by the Telegraph Company, for public business, of the telegraph line constructed by the Union Pacific Railway Company, the entire absence

of proof as to the extent to which that line was, in fact, so used, renders it impossible to ascertain the amount improperly paid to, and without right retained by, the Telegraph Company, and subsequently divided between it and the Railroad Company. *United States* v. *Western Union Telegraph Co.*, 53.

See UNION PACIFIC RAILWAY COMPANY.

WITNESS.

See CRIMINAL LAW, 6;
JURISDICTION, A, 1.